

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.25813 OF 2007
DATED: 04-12-2007

B.Appa Rao, son of late Bangari,
Aged about 52 years, r/o Manyamvaripalem
Post, Jaggampeta Mandal, East Godavari
District.

... Petitioner

versus

1.The Flag Officer Commanding-in-chief
Head Quarters, Eastern Naval Command,
Naval Base, Visakhapatnam.

2.The Chief General Manager,
Naval Armament Depot, Visakhapatnam.

... Respondents

THE HON'BLE SRI JUSTICE D.S.R.VARMA
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THE HON'BLE SRI JUSTICE K.C.BHANU

ORAL ORDER: (per the HON'BLE SRI JUSTICE D.S.R.VARMA)

Heard the learned counsel appearing for the petitioner as well as the learned Assistant Solicitor General, appearing for the respondents.

2. Petitioner is the applicant and the respondents are the respondents, in the M.A., before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for brevity "the Tribunal").

3. This writ of certiorari, under Article 226 of the Constitution of India, is filed seeking to call for the records pertaining to the order, dated 26.10.2006, passed by the Tribunal in M.A.No.393 of 2006 in O.A.No.1388 of 2003, and to quash the

same as illegal, arbitrary and violative of principles of natural justice apart from violative of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and for a consequential direction to the Tribunal to restore the O.A., to its file.

4. The Tribunal, by the impugned order, dated 26.10.2007, dismissed the said M.A., filed for condoning the delay of 625 days in representing the O.A., which was dismissed for default, by order, dated 08.12.2004.

5. The reason given by the counsel for the petitioner in the affidavit, filed in support of the said M.A., was that the file relating to O.A., was misplaced and was mixed up in the disposed off bundles and therefore, the delay in representing the same was neither willful nor wanton.

6. The Tribunal, having found that there is no reason for the petitioner in not contacting the counsel and verifying as to what had happened to the case file, dismissed the said M.A. This kind of silence on the part of the petitioner, in pursuing the case properly, is not warranted. No doubt, in our view, it is a good reason to dismiss the application.

7. But, this is a case where the petitioner appears to have submitted an application, dated 09.12.2002, to the respondents, seeking voluntary retirement, on medical grounds. When it was not considered, a reminder had been sent, which was also allegedly not attended to. In view of the said fact, virtually, the retiral benefits, particularly pensionary benefits of the petitioner would be affected, after serving a long period.

8. We are not inclined to deny the opportunity of being heard in such matters. Settlement of pension is an issue, which goes a long way and takes much time, and because of the dismissal of the said M.A., substantial injustice may also occur to the petitioner, in which event, the loss likely to be caused would be irreparable. Keeping the same in mind, we are of the view that the Tribunal was not justified in rejecting the said M.A., of the present nature.

9. Accordingly, the writ petition is allowed, at the stage of admission, setting aside the impugned order, dated 26.10.2006, in

M.A.No.393 of 2006 in O.A.No.1338 of 2003, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, and consequently, the O.A., is restored to its original file.

JUSTICE D.S.R.VARMA

JUSTICE K.C.BHANU

04TH DECEMBER 2007
HSD